

**DISTRICT ATTORNEY
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OFFICER: Brandon Gembecki
TAX NUMBER: 949015

DISCLOSURE ADVISORY

For the person named above, whom the People may call as a witness, please be advised as follows.

1. Brandon Gembecki testified at a pretrial suppression hearing on April 14 and April 18, 2016, before the Honorable Paul Gardephe in the United States District Court for the Southern District of New York, in the case of *United States v. McDon*, 206 F.Supp. 3d 829 (2016). Judge Gardephe issued a written decision on June 28, 2016, granting the motion to suppress. A copy of the decision is attached.
2. Brandon Gembecki is a named defendant in the civil action *Timothy Miles v. City of New York et al.*, 302510/2014, filed in New York State Supreme Court, Bronx County, involving an incident that occurred on February 13, 2013.
3. The New York City Police Department (NYPD) has deemed substantiated an allegation from January 30, 2014, that Brandon Gembecki failed to appear for court in the Bronx.
4. NYPD has deemed substantiated for Brandon Gembecki allegations from May 7, 2018, of a laboratory invoice discrepancy for a controlled substance, and of an incomplete/improper property clerk invoice.
5. NYPD has deemed substantiated for Brandon Gembecki allegations from November 3, 2018, of an incomplete/improper memobook, failure to prepare a Stop Question Frisk report, and failure to activate body-worn camera.
6. The Civilian Complaint Review Board (CCRB) deemed substantiated an allegation that, on September 30, 2015, Officer Gembecki issued a retaliatory summons. The incident arose when Officer Gembecki, working with a team of three other officers in the Bronx, saw a man walking with a woman. The man resembled a person wanted for a homicide that had occurred ten days earlier, and he was at the exact location where the homicide had occurred. The officers stopped the man and checked him for weapons, while one of the other officers called the precinct detective squad to learn more about the wanted homicide suspect. A small bag of marijuana was recovered from the man. It was determined that the man was not the homicide suspect. Thereafter, the officers took the man and the woman back to the precinct. Officer Gembecki gave the man a summons for disorderly conduct, for blocking or obstructing traffic. The summons did not specify a subsection of the disorderly conduct statute.

Officer Gembecki testified that as the officers approached the man to conduct the stop, the man and woman were jaywalking while crossing the avenue against the signal. There were no markings on the pavement designating the crosswalk, but the man and woman were walking “at the place where you would cross the street.” Traffic was busy with vehicular traffic and school

children and parents walking around. Officer Gembecki said that the man and woman's jaywalking caused vehicles to slow down. Officer Gembecki could not estimate how many vehicles were affected. He did not recall any vehicle horns being honked.

The CCRB investigator determined the following: Even if the man did cross the street against the signal, he was not guilty of disorderly conduct. It was evident that at this point of the incident, the man was walking home, unaware that the officers were following him or that he was about to be stopped. Additionally, Officer Gembecki stated that the woman was guilty of the same offence, yet her disorderly conduct summons makes no mention of her crossing the street against the signal. The closest that any of the officers came to articulating any public inconvenience, annoyance, or alarm was Officer Gembecki's assertion that, at most, the man's action caused motor vehicles to slow down, not even stop. However, Officer Gembecki could not estimate the number of motor vehicles that were affected and he did not recall hearing any motorists honk their horns in response to the man's behavior. Because the circumstances indicate that the man was not guilty of disorderly conduct, it was recommended that this allegation against Officer Gembecki be substantiated.

7. The New York City Civilian Complaint Review Board has deemed substantiated an allegation that, on or about August 21, 2018, Brandon Gembecki spoke discourteously to two civilians. On the evening of August 21, 2018, Brandon Gembecki, other officers and Emergency Medical Services (EMS) were called to an address in the Bronx to remove an Emotionally Disturbed Person (EDP) to the hospital. At the scene, the alleged EDP refused and resisted the officers attempts to remove him to the hospital and he had to be forcibly restrained and taken to an ambulance. During the incident a number of civilians gathered and were instructed by the police to stand back. Some civilians who had not complied with the officers' orders to stand back were ultimately restrained and taken to the precinct. At the precinct, Brandon Gembecki said to two of the persons who had been brought back to the precinct, "What you two did was ridiculous. You acted like fucking children." While the investigation concluded that the use of profanity earlier at the scene was justified by the nature of the situation, the use of profanity at the precinct was not. Therefore, the allegation of "Discourtesy-Word" was deemed substantiated.
8. As of May 7, 2021, the New York City Civilian Complaint Review Board (CCRB) has a pending complaint reported on January 30, 2020 against Brandon Gembecki alleging two allegations of "Force—Physical force" arising from an incident on January 29, 2020.
9. As of May 7, 2021, the New York City Civilian Complaint Review Board (CCRB) has a pending complaint reported on May 18, 2020 against Brandon Gembecki alleging "Abuse [of authority]—Property damaged" arising from an incident on May 15, 2020.
10. As of May 7, 2021, the New York City Civilian Complaint Review Board (CCRB) has a pending complaint reported on June 8, 2020 against Brandon Gembecki alleging "Abuse of authority"—Vehicle search" arising from an incident on May 20, 2020.
11. On May 6, 2020, while drafting a complaint on a new arrest, an assistant district attorney spoke to Officer Brandon Gembecki, the arresting officer. In the case, Officer Gembecki and two other officers stopped the defendant in the vestibule of his apartment building on West 147th Street, and recovered a loaded revolver from his waistband, as well as MDMA and Percocet

pills, among other items, from his pockets. In the Criminal Court complaint, the defendant was charged with two counts of Criminal Possession of a Weapon in the Second Degree, in violation of PL §§ 265.03(1)(b) and 265.03(3), and Criminal Possession of a Controlled Substance in the Fifth Degree, in violation of PL 220.06.

With respect to his observations leading to the seizure and search of the defendant, Officer Gembecki stated to the assistant district attorney, in substance, as follows:

- On May 5, 2020, at around 11:00 p.m., he and two other officers, all then members of Narcotics Borough Manhattan North, were in an unmarked vehicle.
- All three officers were in uniform.
- None of the officers was using a body-worn camera.
- While facing southbound on Broadway, at the intersection of Broadway and West 147th Street, Officer Gembecki observed the defendant on Broadway, walking northbound on the sidewalk and approaching the intersection. Officer Gembecki observed the defendant look nervous, walk quickly, touch his waistband, and look over his shoulder.
- Officer Gembecki then observed the defendant look at the officers' car, adjust his waistband, and walk very quickly, turning from Broadway onto West 147th, continuing eastbound on West 147th.
- When the officers turned onto West 147th, pulling alongside the defendant, Officer Gembecki observed the defendant sweating profusely, and observed the defendant "t[ake] off."
- Officers stopped the defendant in the vestibule of the building on West 147th and recovered the illicit items.

Video footage compiled from various surveillance cameras along Broadway and West 147th Street shows the following:

At just after 11:00 p.m., the defendant is walking northbound on Broadway, on the east-side sidewalk, passing 3556 Broadway and crossing West 146th. The defendant is holding what appears to be a medium-to-small white paper shopping bag in his left hand, and swinging his right arm freely.

The defendant is seen again near the front of 3560 Broadway, walking northbound with his left hand holding the white bag, his right hand holding a cellular phone, and his right arm swinging freely. The defendant briefly checks the cellular phone as he is walking, prior to passing 3570 Broadway. The defendant continues to move northbound from 3570 Broadway to the southeast corner of Broadway and West 147th, carrying the white bag in his left hand and swinging his right arm freely. The defendant looks ahead, slightly to his left, across the intersection, and turns right onto West 147th, his right arm swinging freely while his right hand holds the cellular phone.

At 11:04:04, a dark-colored vehicle is seen moving southbound on Broadway, approaching the intersection of Broadway and West 147th, stopping momentarily at the intersection, then turning left onto West 147th, just after the defendant turns right onto the same street. After the defendant rounds the corner, he moves eastbound on West 147th, looks briefly to his left, seconds before a dark-colored vehicle turns onto West 147th. The defendant, as he moves eastbound on West 147th,

looks at the cellular phone he holds in his right hand, and briefly looks in the direction of the dark-colored vehicle that is slowly driving next to him.

Shortly thereafter, as the defendant nears a building on West 147th, he places the cellular phone in his left hand; removes an object from his pocket with his right hand; holds the object in front of him; walks up the stairs to the building; and uses the object to open the door to the building. The defendant opens a glass door and enters the vestibule of the building.

At the local timestamp 05:01:07-05:01:21 for Camera1 and Camera3, three officers exit the dark-colored vehicle that was previously driving next to the defendant as he walked along West 147th. One officer exits the front passenger seat; a second officer, with a beard and short hair, exits the back seat; and Officer Gembecki, with no facial hair and short hair, exits the driver's seat. The first officer runs towards the apartment building, leaps up a set of stairs, and struggles momentarily with the defendant through the doorway to the vestibule of the building as the defendant attempts to close the door behind him. The officers enter the vestibule in the same order in which they exited their vehicle. Inside the vestibule, the officers pin the defendant to the wall and recover a firearm from his waistband.

The video footage does not show the defendant look over his shoulder or touch his waistband as he walks along Broadway.

The video footage does not show the defendant adjust his waistband when he looks at the officers' car.

The video footage does not show the defendant "take off" when officers pull up next to him.

The video footage does not appear to show that the defendant was walking quickly when he would have been first observed by Officer Gembecki, or that the defendant ever increased his speed.

11. On November 16, 2019, while drafting a complaint on a new arrest, an assistant district attorney spoke to Officer Brandon Gembecki, the arresting officer. Officer Gembecki explained to the assistant, in substance, that he had recovered a loaded and operable pistol from a satchel worn by the defendant in front of 1780 Madison Avenue. In the Criminal Court complaint, the defendant was charged with two counts of Criminal Possession of a Weapon in the Second Degree, in violation of PL §§ 265.03(1)(b) and 265.03(3), and Criminal Possession of a Firearm, PL 265.01-b(1).

During the conversation with the assistant, Officer Gembecki provided some details of the circumstances leading to the defendant's stop, search, and arrest. On November 20, 2019, Officer Gembecki met with the assistant again and provided more information regarding the matter. With respect to his observations leading to the seizure and search of the defendant, Officer Gembecki stated to the assistant district attorney, in substance, as follows:

- While riding in an unmarked vehicle traveling north on Madison Avenue, he observed the defendant walking northbound on Madison Avenue, on the west side of the sidewalk, between East 115th Street and East 117th Street.

- During this time, he observed the defendant walking briskly, looking over his shoulder, periodically touching a black satchel slung over his shoulder, and wearing his hoodie over his head.
- He observed that the satchel contained something heavy from the way it bounced on the defendant's hip.
- He observed the defendant come to a stop in front of 1780 Madison Avenue.
- His car then came to a stop, double parked on the street in front of the defendant.
- He observed the defendant in front of the building for a few minutes, during which time he observed the defendant messaging on his phone and looking around nervously, and observed along the bottom edge of the satchel a bulge that resembled the barrel of a gun.
- He exited the car with another officer and approached the defendant.
- As he approached, he smelled marijuana coming from the defendant.
- When he reached the defendant, he asked the defendant if he had any marijuana and the defendant told him he did.
- He then obtained identification from the defendant and passed it to the other officer, who searched the defendant's name on the other officer's phone.
- He heard the other officer say that the defendant had a bench warrant as Officer Gembecki asked the defendant if he had a gun, to which the defendant replied that he did.
- He then patted down the outside of the satchel as he and the other officer detained the defendant and felt the outline of a gun.
- He recovered a loaded pistol from the satchel.

On November 20, 2019, Officer Gembecki testified in the grand jury in regards to this matter. Officer Gembecki testified that he observed the defendant walking northbound on the west side of Madison Avenue, looking over his shoulder, carrying a bag over his shoulder which appeared to be heavy, and touching the bag multiple times.

Officer Gembecki retrieved video surveillance footage from 1770 Madison Avenue and provided it to the assistant during the meeting on November 20, 2019. At the assistant's direction, Officer Gembecki retrieved additional video surveillance footage from 1780 Madison Avenue and provided it to the assistant on a later date.

The camera that recorded the video surveillance footage from 1770 Madison Avenue was facing southbound on the west side of Madison Avenue, north of East 116th Street. The video shows the defendant walking northbound on the west side of Madison Avenue, starting at approximately 6:34:44 a.m. (video timestamp).

The video surveillance footage from 1780 Madison Avenue shows the sidewalk and the roadway in front of the building. The video shows the defendant coming to a stop outside the front door at 6:33:00 a.m. (video timestamp). The officers' black SUV stops in front of the building at 6:34:00 a.m. At 6:34:48 a.m., Officer Gembecki (wearing a navy-blue sweater) and the other officer (wearing a gray sweater) exit their vehicle and stop the defendant.

The 1770 Madison Avenue video shows the defendant's head moving only slightly in the direction of traffic as he walks along Madison Avenue. The defendant never appears to look "over his shoulder."

The 1770 Madison Avenue video shows the defendant wearing his satchel on the left side of his body as he walks along Madison Avenue. The defendant's left side faces the buildings while the

defendant's right side faces the avenue. Therefore, the defendant's body would be between the satchel and any observer on the roadway of Madison Avenue.

The 1770 Madison Avenue video shows the defendant walking from the intersection at East 116th Street until he walks out of the frame approximately midway between East 116th Street and East 117th Street. The video continues for approximately five seconds after the defendant walks out of the frame. During this time, the officers' black SUV does not appear on Madison Avenue. The absence of the officers' car in this footage appears to be inconsistent with Officer Gembecki's statement that he observed the defendant walking from East 115th Street to East 117th Street.

The 1770 Madison Avenue video never shows the defendant touching the satchel. The same video also shows the defendant holding a cell phone in one hand and a coffee cup in the other hand. The 1780 Madison Avenue shows the defendant with the phone and coffee cup still in each hand, and at no time between the two videos are the defendant's hands, the phone, and the cup not in view. The defendant also never touches his satchel on the 1780 Madison Avenue video.

12. In connection with the matters described in paragraphs 10 & 11, above, the New York County District Attorney's Office Police Accountability Unit is conducting an investigation in which Brandon Gembecki is one of the subjects. Brandon Gembecki is also aware of that investigation.
13. The New York City Police Department (NYPD) has deemed substantiated an allegation that, on or about October 6, 2020, Brandon Gembecki prepared an incomplete or inaccurate property clerk invoice for currency.

Various publicly available websites and databases contain disciplinary information for certain law enforcement officers. Two of these are online databases maintained by the New York City Police Department (NYPD) (<https://nypdonline.org/link/1026>) and the New York City Civilian Complaint Review Board (<https://www1.nyc.gov/site/ccrb/policy/MOS-records.page>).

Information in such databases about this officer is not necessarily included in this advisory. For some NYPD disciplinary matters in which a departmental trial was held for an officer, the decision in the trial is included in the NYPD database under the "Documents" tab for that officer.

Any information herein regarding civil lawsuits against an officer is not necessarily a complete list of civil lawsuits in which that officer is a defendant.

Allegations of misconduct that have not been substantiated and are not pending (including, but not limited to, findings of unsubstantiated, unfounded, and exonerated), and allegations of technical infractions, are not subject to disclosure and are not included in this advisory.

The decision to include information in this advisory does not represent a conclusion by the People that it is required to be disclosed.

The People reserve the right to oppose or move to limit the use of any information included herein or disclosed in the future.

If you have any questions, please contact the Assistant District Attorney assigned to the case on which you are receiving this advisory.

Date: May 28, 2021